

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

75-1414 ^{7cc}

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :

Plaintiff-Appellee, :

-against- :

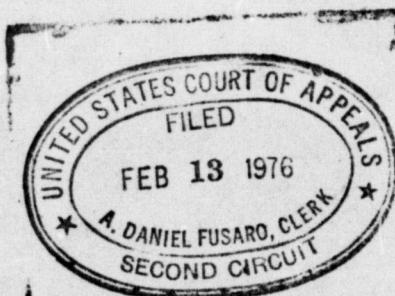
ISAAC WILLIAMS, :

Defendant-Appellant. :

-----x
Docket No. 75-1414

APPENDIX TO THE BRIEF
FOR APPELLANT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ISAAC WILLIAMS
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,

Of Counsel.

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PAGINATION AS IN ORIGINAL COPY

FILED 12/12/75 5 CRIM. 85

'5 CRIM. 85

11

TITLE OF CASE		ATTORNEYS				
THE UNITED STATES		For U.S.:				
vs.		Michael Q. Carrey, AUSA 791-1934				
ISSAC WILLIAMS						
For Defendant:						
05)	STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
	J.S. 2 mailed	Clerk				
	J.S. 3 mailed ✓	Marshal				
	Violation	Docket fee				
	Title 18					
	Sec. 1341					
	41 fraud.					
	(Eighteen Counts)					
DATE		UNITED STATES COURT OF APPEALS	FILED	JAN 5 1976	A. DAVID FISCHER, CLERK	
		SECOND CIRCUIT			PROCEEDINGS	
-24-75	Filed indictment.					
2-3-75	Deft. present (Atty. present) enters a plea of not guilty, 10 days for motions. Bail fixed by the Magistrate continued, (\$10,000 P.R.B.) Frankel, J. Case assigned to Bonsal, J. for all purposes.					
7/75	Filed papers orig. filed with Magistrate Raby: (1) docket entry sheet, (2) criminal complaint, (3) Magistrate's arrest warrant, SDNY (4) disposition sheet (5) appointment of counsel (6) appearance bond.					
-12-75	Case called (attys. present) no appearance by deft. Bench warrant ordered. Bonsal, J.					
-13-75	Bench warrant issued.					
9-03-75	Case called for trial. No appearance by deft. Bench warrant ordered. Bail forfeited on Govt.'s motion. Bonsal, J.					
16-75	Bail reinstated. Order for bail forfeiture revoked. Bonsal, J.					

DATE	PROCEEDINGS
09-19-75	Filed warrant for arrest of Issac Williams and return, warrant returned unexecuted.
10-23-75	Jury empanalled trial begun. Bonsal, J.
10-24-75	Trial cont'd.
10-28-75	Trial cont'd. Deft. found guilty oncts. 1-18. Pre-sentence report ordered. 12-8-75 set for sentence. Bail cont'd. Bonsal, J.
12-09-75	I. Williams-filed Unsecured Personal Recogniaance Bond pending appeal in the sum of \$20,000.
12-08-75	ISAAC WILLIAMS (atty. present) Filed JUDGMENT- Eighteen (18) MONTHS on each of counts 1 thru 18, inc). to run connc. with each other. Bail pending appeal filed in the amount of \$20,000. P.R.B. to be posted by 12-9-75 at 4PM. Bonsal, J, issued allcopies
12-12-75	Filed deft. 's notice of appeal from judgment of 12-8-75. Mailed copies to U.S. Atty. & Deft.
12-15-75	Filed Govt. 's requests to charge.

A TRUE COPY
 RAYMOND F. BURKHARDT, Clerk
 By Ed Becker
 Deputy Clerk

8

QC:nc
-736

Closed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- v -

ISSAC WILLIAMS,

Defendant.

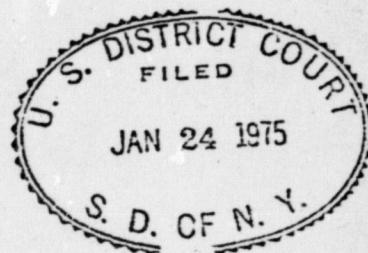
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: INDICTMENT
: 74 Cr.
: -----x

75 CRIM. 85

The Grand Jury charges:

1. From on or about the 1st day of May, 1973, up to and including June, 1974, in the Southern District of New York and elsewhere, ISSAC WILLIAMS, the defendant, unlawfully, wilfully and knowingly did devise a scheme and artifice to defraud certain department stores and other commercial establishments (hereinafter referred to as the "parties to be defrauded") and to obtain money and property from the parties to be defrauded by means of false and fraudulent pretenses, representations and promises.

2. It was a part of said scheme and artifice that ISSAC WILLIAMS, the defendant, would and did open checking account No. 2-9469, at Bankers Trust, Hudson Valley, N.A., Monteco East Plaza, Monticello, New York and would deposit in such account less money than the total amount of the checks drawn on it.



3. It was further a part of said scheme and artifice that ISSAC WILLIAMS, the defendant, would order goods by mail from Macy's, Herald Square, New York, New York, enclosing with each order, in payment therefor, a check drawn by him on the account identified in paragraph two above, which account had funds insufficient to cover the checks.

4. On or about the dates hereinafter set forth, in Counts One through Eighteen, in the Southern District of New York and elsewhere, ISSAC WILLIAMS, the defendant, unlawfully, wilfully and knowingly, and for the purpose of executing the

scheme and artifice set forth in paragraphs 1 through 3 above and attempting to do so, did place and cause to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the United States Postal Service, certain matters and things, to wit, letters containing orders for goods, personal checks and other matter, addressed to Macy's, Herald Square, New York, New York and identified as hereinafter set forth:

COUNTS ONE THROUGH EIGHTEEN

COUNT	ON OR ABOUT DATE MAILED	ADDRESSEE	ARTICLE MAILED:	AMOUNT OF	UNPAID CHARGES
			CHECK NO.	CHECK ORDER	
1	10/14/73	Macy's	210	\$105.93	\$105.93
2	10/14/73	Macy's	211	209.06	209.06
3	10/14/73	Macy's	212	324.50 (nothing shipped)	
4	10/14/73	Macy's	213	53.50	53.00
5	10/14/73	Macy's	214	171.17	171.17
6	10/14/73	Macy's	215	52.40	53.16
7	10/14/73	Macy's	216	66.24	67.37
8	10/14/73	Macy's	217	62.00	61.42
9	10/14/73	Macy's	218	70.62	70.43
10	10/15/73	Macy's	219	44.90	44.48
11	10/15/73	Macy's	220	36.36	36.59
12	10/15/73	Macy's	223	74.88	75.43
13	11/7/73	Macy's	225	29.64	29.64
14	11/25/73	Macy's	260	74.20	74.20
15	11/25/73	Macy's	268	92.92	92.87
16	12/15/73	Macy's	274	170.70 (nothing shipped)	
17	12/15/73	Macy's	295	339.16 (nothing shipped)	
18	12/15/73	Macy's	299	73.33 (nothing shipped)	

(Title 18, United States Code, Section 1341).

Conrad Paul
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

JUDGE BROWN

75 CRIM. 85

Form No. USA-335-271 (54) D-23-59

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ISSAC WILLIAMS,

Defendant.

Sep. 8/12/75 Case called (date) Present
of no appearance by defendant. Bond
waived ordered. (initials) *OB* *Bonsal*
Tentatively
10 days for motion. Pre-Trial Conference
ordered, 3rd. For trial on Govt Motion
overdef.

INDICTMENT

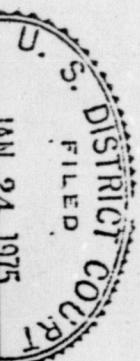
18USC§1341

PAUL J. CURRAN
United States Attorney

A TRUE BILL

Arnold Paul
Foreman

FPT-58-1-13-70-204-4023



OCT 23 1975 TONY ENRICOLO TRIAL BEGON
OCT 24 1975 TRIAL CONT'D. SUMMATION BY GOV
OCT 28 1975 TRIAL CONT'D. SUMMATION BY GOV
CHARGE TO THE COURT, INDICTMENT SWORN
IN FRONT OF THE COURT, INDICTMENT SWORN
IN FRONT OF THE COURT, INDICTMENT SWORN

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ISSAC WILLIAMS,

Defendant.

INDICTMENT

18USC§1341

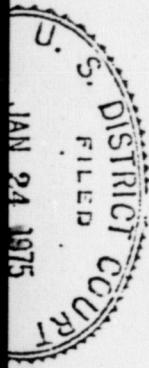
PAUL J. CURRAN

United States Attorney

A TRUE BILL

Paul J. Curran
Paul J. Curran
Foreman

FPI-89-1-13-70-2011-4028



1975 SENTENCE ISSAC WILLIAMS (ATLANTIC CITY LEGAL AID
SENTE) CTI-18. COMMITTED TO CUSTODY OF ATTY. GEN FOR
PRISONMENT FOR 18 MONTHS. ON EACH COUNT 1-18 TO ROLL
ON CUSTODY. ADVISED OF RIGHT TO APPEAL
\$10,000 PRB TO BE PAID BY 4PM 12/9

④

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By Tom Becker
Deputy Clerk

2 THE CHARGE OF THE COURT

3 J. Bonsal

4 THE CLERK: The Court will now charge the jury.

5 Will you lock the door, please, Marshal.

6 THE COURT: Mr. Foreman, and you are by virtue
7 of occupying the first chair, ladies and gentlemen of
8 the jury:9 First of all, I would like to thank each of
10 you for the care and attention which you have shown
11 throughout this trial and to express my appreciation to
12 each of you for the sacrifices I know each of you has had
13 to make in your own personal lives so you could serve
14 in this very important capacity, being on a federal jury.15 I know you served a day beyond your term and
16 if any of you have any problems with your employer by
17 reason of that, I would be grateful if you let my chambers
18 know and I will be glad to straighten it out.19 I am sure that you will give me the same degree
20 of attention which you have shown throughout the trial
21 so that you may understand the principles of law which
22 apply to this case.23 Remember I told you when we started that it
24 was your duty here to weigh the evidence calmly and
25 dispassionately without any sympathy or prejudice for or

2 against the Government or this defendant, Mr. Williams.

3 I told you that everyone appearing before
4 this bar of justice is entitled to a fair and impartial
5 trial regardless of his occupation or station in life.

6 I told you that your verdict here must be based
7 solely on the testimony which you heard from that witness
8 chair and on the exhibits which were received in evidence
9 and on nothing else at all.

10 Then I told you that it was my duty to instruct
11 you as to the law which applies here and you must accept
12 my instructions as to the law, but you, the jury, are the
13 sole judges of the facts.

14 It is not what a lawyer says a witness testified
15 to nor what a document contains or shows or what it might
16 contain on these subjects; it is what you, the jury,
17 remember and decide.

18 Well, I also told you during the trial I would
19 have conversations with one or the other of the lawyers,
20 and indeed I did. I told you at that time to please pay
21 no attention to those conversations.

22 Above, all, ladies and gentlemen, please draw
23 no inferences from anything I may have said during this
24 trial that I favor one side or the other here, because,
25 of course, I do not. That is not my province. It is yours.

2 Now, throughout my charge, ladies and gentlemen,
3 I will instruct you that you may not convict this defendant,
4 Mr. Williams, unless and until you are satisfied
5 that the Government has proven each element comprising
6 the crimes charged beyond a reasonable doubt.

7 What do we mean by beyond a reasonable doubt?
8 Well, of course the words suggest the answer. It is a
9 doubt based on reason. It is a doubt which a reasonable
10 man or woman might entertain. But a reasonable doubt is
11 not a fanciful doubt, it is not an imagined doubt, it
12 is not a doubt that a juror might conjure up in order to
13 avoid performing an unpleasant task; it is a reasonable
14 doubt. It is a doubt which arises in a juror's mind
15 because of something in the evidence in the case or lack
16 of evidence. It is the kind of doubt which would cause
17 a reasonable man or woman in a more serious and important
18 matter in his or her life to hesitate to act and the
19 burden is on the Government to prove the guilt of this defendant
20 beyond a reasonable doubt.

21 Now, the Government need not prove the defendant's
22 guilt beyond all possible doubt, because if that
23 were the rule, few people, however guilty they might be,
24 would ever be convicted.

25 In this world of ours it is practically impossible

2 for one to be absolutely and completely convinced of any
3 controverted fact which by its nature is not susceptible
4 to mathematical precision or to mathematical certainty,
5 so the law requires that the Government prove the guilt
6 of a defendant beyond a reasonable doubt, not beyond all
7 possible doubt.

8 When I review the indictment with you, ladies
9 and gentlemen, please remember, as I told you at the out-
10 set, that the indictment is merely the way the Government
11 brings into court individuals it claims have violated the
12 law.

13 I told you that the indictment is not evidence
14 of the guilt of the defendant and the indictment does not
15 detract in any degree from the presumption of innocence
16 with which the law surrounds this defendant, Mr. Williams,
17 until his guilt is proven.

18 This presumption of innocence remains with
19 Mr. Williams throughout the trial and applies to the
20 consideration of each of the essential elements of the
21 crimes charged, and this presumption of innocence remains,
22 unless and until you, the jury, find that the Government
23 has proved the guilt of the defendant beyond a reasonable
24 doubt.

25 The defendant, Mr. Williams, has pled not guilty

2 here and by doing so he has put in issue every material
3 allegation in the indictment, and as I have said, the
4 Government must prove these elements beyond a reasonable
5 doubt.

6 The defendant is not required to put on witnesses
7 in his defense if he doesn't want to. He is not required
8 to do anything because as I mentioned to you, the burden
9 is on the Government. The defendant is not required
10 to establish his innocence.

11 If the Government has not proved to you that
12 the defendant is guilty beyond a reasonable doubt, then of
13 course you would find the defendant is not guilty.

14 Now this has been a short trial, ladies and
15 gentlemen, and I don't intend to review all of the evidence
16 with you. You have heard it this morning from the law-
17 yers, and as I mentioned to you, it is not what they say
18 or what I say; it is your recollection which controls.

19 It may help you in refreshing your own recollec-
20 tions if I suggest some of the contentions as I understand
21 them, but here again, pay no attention to what I do there
22 either.

23 As I understand it, the Government here is con-
24 tending that the defendant, Mr. Williams, devised a scheme
25 to defraud various department stores by issuing checks

2 which he knew were drawn on an account where there were
3 insufficient funds to back up the checks.

4 The Government contends that Mr. Williams
5 continued to issue checks on his account at the Bankers
6 Trust in Monticello, New York, during the months of Oc-
7 tober, November and December 1973, when he knew that there
8 were not any funds there and he was notified by the bank
9 that his account had been closed.

10 The Government further contends that in carry-
11 ing out his scheme to defraud the department stores
12 through this bank account, that Mr. Williams used the
13 mails and I don't think there is any dispute that Mr.
14 Williams used the mails in sending in the orders to the
15 department stores with the checks.

16 Mr. Williams, the defendant, denies the Govern-
17 ment's contentions. He denied that he devised a scheme
18 to defraud any of these department stores. I think he
19 concedes only that his bookkeeping may not have been of
20 the best, but he contends that nobody ever told him,
21 neither the bank nor the department stores, told him that
22 his account had been closed and that he always thought he
23 had sufficient funds.

24 You remember he testified, I think, that he
25 had asked his wife to take the proceeds from the food stand

2 you remember, to the bank, and that also he asked her
3 to take the money, cash I guess it was, from his winnings
4 at the Roosevelt Raceway, \$4500 I sort of remember, and
5 that she had told him that she had done so.

6 It was only much later, he said, that he found
7 out that that money had not been put in his account, that
8 it had been taken by some cousin, I think, who had gone
9 down to Georgia.

10 Now the statute involved in this case, ladies
11 and gentlemen, is Section 1341 of Title 18 of the United
12 States Code, which is known as the Federal Mail Frauds
13 statute.

14 The statute provides in relevant part, and there
15 is a lot of verbiage in here, "Whoever, having devised
16 or intending to devise any scheme or artifice to defraud,
17 or for obtaining money or property by means of false or
18 fraudulent pretenses, representations or promises for the
19 purpose of executing such scheme or artifice or attempt-
20 ing so to do places in any post office or authorized
21 depository for mail matter any matter or thing whatever
22 to be sent or delivered by the postal service, or takes
23 or receives therefrom any such matter or thing, or know-
24 ingly causes to be delivered by mail according to the
25 direction thereon, or the place at which it is directed

2 to be delivered by the person to whom it is addressed
3 any such matter or thing, is guilty of a crime."

4 Now, all this means, ladies and gentlemen, is
5 that if one devises a scheme to defraud and uses the mails
6 in connection with that scheme, he is guilty of a crime
7 under this statute.

8 Turning to the indictment, ladies and gentlemen,
9 which I remind you again is merely the charge and not
10 evidence, the indictment here reads as follows:

11 "The grand jury charges:

12 "1. From on or about the first day of May, 197
13 up to and including June 1974, in the Southern District
14 of New York and elsewhere" -- Macy's is in the Southern
15 District of New York -- at least the main branch is as
16 to which I think we heard testimony -- "Isaac Williams,
17 the defendant, unlawfully, wilfully and knowingly did
18 devise a scheme, an artifice to defraud certain department
19 stores and other commercial establishments (hereinafter
20 referred to as the parties to be defrauded) and to obtain
21 money and property from the parties to be defrauded by
22 means of false and fraudulent pretenses, representations
23 and promises.

24 "2. It was part of said scheme and artifice
25 that Isaac Williams, the defendant, would and did open

2 checking account No. 2-9469 at Bankers Trust, Hudson
3 Valley NA, Monticello, New York, and would deposit in
4 such account less money than the total amount of the
5 checks drawn on it.

6 "3. It was further a part of said scheme and
7 artifice that Isaac Williams, the defendant, would order
8 goods by mail from Macy's, Herald Square, New York, New
9 York, enclosing with each order in payment therefor a
10 check drawn by him on the account identified at Paragraph
11 2 above, which account had funds insufficient to cover the
12 checks.

13 "4. On or about the dates hereinafter set
14 forth in counts 1 through 18, in the Southern District of
15 New York and elsewhere, Isaac Williams, the defendant,
16 unlawfully, wilfully and knowingly and for the purpose
17 of executing the scheme and artifice set forth in Para-
18 graphs 1 through 3 above and attempting to do so, did
19 place and cause to be placed in post offices and auth-
20 orized depositories for mail matter to be sent and delivered
21 by the United States Postal Service certain matters and
22 things, to wit, letters containing orders for goods,
23 personal checks and other matter, addressed to Macy's,
24 Herald Square, New York, New York, and identified herein-
25 after as set forth in counts 1 through 18," and then they

1 **raging**

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2 are all listed by the number of the count, the date, the
3 mailing, the addressee, which is Macy's in every case, the
4 check number and the amount, and I think finally there
5 is a column of unpaid charges.

6 Now, these checks, as I understand it, ladies
7 and gentlemen, are Exhibits 15 through 32.

8 I think as counsel indicated in their summation
9 the Government contends that goods were shipped in all
10 but four of these instances which are so indicated on the
11 indictment.

12 I will hand you a copy of this indictment when
13 you retire merely to keep track of the checks and the
14 counts.

17 Now, while under the law, ladies and gentlemen,
18 you must consider these counts separately and return a
19 separate verdict as to each count, the point is, and I
20 think counsel has readily conceded, the real issue is:
21 Was there a scheme to defraud? If there was a scheme
22 to defraud and these checks were pursuant to that scheme,
23 that's one thing.

24 On the other hand, if there was no scheme to
25 defraud, then, of course, you will find him not guilty on

2
all the counts.3
Now, in order to find the defendant, Mr. Williams,
4
guilty on any of these counts, ladies and gentlemen, the
5
Government must prove beyond a reasonable doubts three
6
elements: First, that Mr. Williams did devise a scheme
7
or artifice to defraud or to obtain goods or money by
8
means of false or fraudulent representations or promises.
9
That, as I mentioned, is the crucial issue here.10
2. That in carrying out the scheme the defendant
11
either used the mails himself or caused others to use
12
the mails. I don't think there is any question about
13
that. I think that Mr. Lipson conceded that mails had
14
been used here and obviously they were.15
The third element is that the defendant acted
16
wilfully, knowingly and unlawfully. That is the other
17
crucial element in this case.18
Going back to the first element, the Government
19
must prove that the defendant devised a scheme or artifice
20
to defraud.21
Now, what is a scheme? A scheme is merely a
22
plan, that's all it is, a plan worked out, an arrangement
23
to accomplish an unlawful purpose.24
To defraud, a scheme to defraud. What does
25
defraud mean? Defraud means that the purpose of the

2 scheme was to cheat someone; such as buying goods that
3 you don't want to pay for, that's cheating somebody, that's
4 a fraud.

5 So here the Government must prove that the de-
6 fendant did devise a scheme to defraud, to obtain goods
7 by means of false or fraudulent pretenses, representations
8 or promises.

9 As I understand it the Government is contending
10 that here the defendant issued these checks to the depart-
11 ment stores knowing that there were insufficient funds in
12 his checking account for the purpose of obtaining the
13 goods which he ordered.

14 Now, the defendant denies this. Of course he
15 says he didn't know this and as I recall his testimony
16 he said he was ordering things for Christmas for his
17 children.

18 The defendant also testified, and I think I
19 reviewed that with you, that he thought at all times he had
20 enough money in the bank to pay those checks and I told
21 you about his instructions to his wife about the money
22 from the food stand and about the money he said he won
23 at the Roosevelt Racetrack.

24 Finally I think the defendant contends that he
25 didn't know that his bank account had been closed until

1 rg:mq

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2 some time after his arrest by the Post Office authorities
3 in January of 1974.

4 Here ladies and gentlemen, you must
5 review these contentions. Of course if you find that
6 the defendant did act in good faith and he did not devise
7 a plan or scheme to defraud, then you would find him
8 not guilty.

9 On the other hand, if after reviewing the
10 evidence you find that he did devise such a plan or scheme,
11 then you are to consider the remaining elements I mentioned
12 to you, the second one being the use of the mails and
13 as to that, I don't think there is any problem, nor is there
14 any issue as to whether Mr. Williams signed the checks.

15 I think the parties stipulated he did sign
16 all these checks that are mentioned in the indictment.

17 Now, the third element, and this again is an
18 important one, is that the Government must prove beyond
19 a reasonable doubt Mr. Williams was acting wilfully,
20 knowingly and unlawfully when he issued these checks;
21 that he did it with the purpose of cheating Macy's out
22 of this merchandise.

23 How do you determine the defendant's knowledge
24 and intent? How do you determine whether he had the
25 criminal intent here, that he was seeking to defraud

2 Macy's pursuant to this scheme?

3 Well, of course, an act is done knowingly
4 and wilfully if it is done voluntarily and purposefully.
5 An act can be done wilfully and knowingly if it is done
6 recklessly, in disregard of the law, such as if you should
7 find a conscious purpose in not complying with the law,
8 And an act is done wilfully, knowingly and unlawfully if
9 it is done with an evil motive or purpose, but an act is
10 not done wilfully, knowingly and unlawfully if it is done
11 by mistake, done by carelessness or done by other innocent
12 reason.

13 Now, obviously we can't look into Mr. Williams'
14 mind to determine what his intentions were on these oc-
15 casions. You can't look into his mind to see what
16 knowledge he had at the time to determine his specific
17 intentions, but these are matters which you, the jury,
18 must determine or make careful consideration of the
19 facts and circumstances which were brought out during
20 the trial.

21 The knowledge and intentions, the wilfulness,
22 if you will, of the defendant, may only be understood
23 when put in the context of the circumstances surrounding
24 his acts and the reasonable inferences which you, the jury,
25 find may be drawn from them.

2 You might ask yourselves whether you believe
3 these transactions were normal or abnormal; whether you
4 think the background of the defendant made it likely
5 or unlikely that he understood what he was doing; whether
6 you think the defendant had a motive; whether you think
7 he had a financial interest in carrying this out.

8 These are the kinds of questions, ladies and
9 gentlemen, and of course not the only ones, that you
10 should ask yourselves in order to determine Mr. Williams'
11 knowledge and intentions on these occasions.

12 Of course, I don't suggest any answers to these
13 questions because after all in your own daily affairs
14 you are continually called upon to use your own common
15 sense and experience to determine from the actions or
16 statements of others what their real intentions and
17 purposes are.

18 Please do exactly the same thing here.

19 You will recall there was testimony during
20 the trial via people from Macy's, Gimbels and Abraham &
21 Straus concerning some other checks which were sent out
22 around this period with orders on those stores.

23 Now this indictment does not charge any viola-
24 tions of the law with respect to the checks in these
25 other department stores. The only reason I allowed

2 this evidence in, ladies and gentlemen, is so that you
3 could determine Mr. Williams' knowledge and intentions
4 at the time of the checks which are covered by the indict-
5 ment. It is only for that period that I let that evi-
6 dence in.

7 In considering the evidence here, ladies and
8 gentlemen, bear in mind that the law recognizes two types
9 of evidence: direct evidence and circumstantial evidence.

10 Direct evidence is the testimony of a witness
11 who testifies as to what he did or what he saw.

12 Circumstantial evidence consists of circumstances
13 from which the jury may infer by a process of reason cer-
14 tain facts which are sought to be established as true.

15 For example, circumstantial evidence is when
16 you come into your apartment and your coat and hat are
17 wet and somebody is in there watching television and they
18 say to you, "It is raining outside." They haven't looked
19 outside, they looked at you. You have a wet coat and hat
20 and by a process of reasoning they say it is raining out-
21 side. That's circumstantial evidence that it is raining.

22 Well, there is circumstantial evidence here in
23 connection with all these documents which were received
24 during the trial and both direct and circumstantial evidence
25 are good evidence and no greater certainty is required

2 when it is circumstantial, but in any event the Government
3 must prove the guilt of the defendant beyond a reasonable
4 doubt.

5 The Government may ask you to draw one set of
6 inferences while the defendant asks you to draw another,
7 but it is for you, the jury, alone, to decide what in-
8 ferences you will draw from the evidence and what facts
9 you find to have been proven.

10 Remember, these inferences must be reasonable
11 inferences based on the evidence or lack of evidence.
12 Please don't base inferences on speculation.

13 Now you, the jury, of course, are the exclusive
14 judges of the credibility of the several witnesses who
15 appeared before you. How do you determine credibility?

16 Well, of course you subject the testimony of
17 all witnesses to the same standards whether they are Gov-
18 ernment witnesses or defense witnesses. It is not the
19 number of witnesses, it is the quality of the testimony,
20 not the quantity of the testimony which you, the jury, most
21 likely think represented a true picture of what happened.

22 So in considering the credibility of these wit-
23 nesses, ladies and gentlemen, again use your everyday
24 common sense.

25 How did they impress you? Did you think they were

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2 testifying frankly, candidly and fairly?

3 So here again apply your common sense and ex-
4 perience just as you do when you are called upon to deter-
5 mine an important matter in your own lives when you have
6 to decide whether you have been given a true picture of
7 a given situation.

8 You would consider, I think, a witness' demeanor,
9 you would take into account his background, his occupation,
10 his business, his prior criminal record, if any. You
11 would consider a witness' candor, or lack of it, a wit-
12 ness' possible bias, his means of information and the ac-
13 curacy of his recollection and you would consider whether
14 you think a witness' testimony is supported or whether
15 you think it is contradicted by other credible testimony
16 or circumstances.

17 You would consider whether a witness has an
18 interest in the case, an interest to be served in testify-
19 ing.

20 An example is Inspector Kelleher
21 of the Post Office Department. Well, he is a law enforce-
22 ment officer. He has an interest in prosecuting people
23 whom he thinks have violated the law. Well, that's an
24 interest you can consider.

25 Then, of course, Mr. Williams testified. He is

2 the defendant in this case. He didn't have to. He testi-
3 fied voluntarily. But manifestly, he has a very impor-
4 tant interest in this case. Of course, this doesn't
5 mean that a witness will change his story or color it or
6 withhold anything because he has an interest. It is merely
7 a factor for you, the jury, to consider in connection with
8 his testimony.

9 Then, as I recall it, there was some evidence
10 during the trial-- I think Mr. Williams testified that
11 back in 1966, it is almost ten years ago-- that he pled
12 guilty to petty larceny, something with TVs or something
13 like that in the New York courts.

14 Now here you consider that testimony not to de-
15 termine whether he committed the crimes here charged, but
16 you may consider it and consider it only in considering
17 Mr. Williams' credibility. You can consider it in con-
18 nection with that and for no other purpose.

19 A witness may be discredited or impeached by
20 contradictory evidence and if you think that a witness
21 has been impeached and discredited, you can give that
22 testimony of that witness such credibility as you think it
23 deserves. If you think a witness is lying to you, you
24 can disregard all his testimony or you can accept part
25 of it if you find it reliable and you may disregard the rest.

2 Now, I think I mentioned to you already that in
3 these 18 counts a separate crime is charged in each count,
4 so you must consider them separately and of course the
5 fact you may find the defendant guilty or not guilty on
6 one count, does not control your verdict on the remaining
7 counts.

8 Of course, you have the right to see any or
9 all of these exhibits which have been received during the
10 trial. If you want to see any of these exhibits, Mr.
11 Foreman, just let the marshal know and they will be made
12 available to you.

13 Remember also, ladies and gentlemen, that a
14 jury deliberation is one in which everyone participates,
15 expresses views, exchanges views. Please don't be afraid
16 of changing your original view if after discussing it
17 with your fellow jurors you become convinced that your
18 original view was wrong, but, on the other hand, never sur-
19 render your honest conviction in the case. Never surrender
20 that, and certainly don't surrender it because other jurors
21 may disagree with you or you may be outvoted. Never sur-
22 render your own honest convictions and you will seek to
23 arrive at a verdict here if you can do so reasonably and
24 consistently with the conscientious convictions of each
25 and every one of you.

2 Now, it is obviously extremely important both
3 to the Government and to the defendant Mr. Williams that
4 this case be decided by you. This being a criminal case,
5 your verdict must be unanimous. It is a verdict which
6 reflects the conscientious conviction of each of you.

7 If after reviewing all of the evidence here,
8 ladies and gentlemen, you find that the defendant is not
9 guilty, please do not hesitate for any reason to return
10 a verdict of not guilty. but, on the other hand, if you
11 find that the law has been violated as charged, you must
12 not hesitate to render a verdict of guilty because of
13 sympathy or any other reason at all.

14 Please don't consider the question of possible
15 punishment if you find the defendant is guilty. Please
16 don't let this enter into your deliberations in any way.

17 The duty of imposing sentence rests on the
18 Court and you must not allow consideration of punishment to
19 affect you or seek to make you avoid performance of an
20 unpleasant task.

21 Finally, ladies and gentlemen, I am sure if you
22 listen to the views of your fellow jurors and if you apply
23 your common sense here you will reach a fair verdict.

24 Remember that that verdict must be rendered
25 without fear, without favor, without prejudice and without

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2 sympathy.

3 Will counsel come forward, please.

4 (At the side bar)

5 MR. LIPSON: I have no objections.

6 THE COURT: All right.

7 How about you?

8 MR. POTTER: No.

9 THE COURT: All right. Thank you very much.

10 (In open court)

11 (Alternate jurors excused)

12 (Marshal duly sworn)

13 THE COURT: This is a copy of the indictment,
14 Mr. Foreman, and I will ask Mr. Wallace to mark this as
15 a Court exhibit and to hand it to you.

16 Remember, the indictment is merely the charge
17 and you will render a separate verdict on each of these
18 counts and your verdict will be either guilty or not
19 guilty.

20 (Indictment marked Court Exhibit 1)

21 THE COURT: I hope, ladies and gentlemen, that
22 your sandwiches will be arriving very shortly. I have to
23 be out of the courthouse from about 12:45 to about 1:45
24 and I thought I better mention that to you.

25 Thank you very much.

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2 (At 11:56 a.m. the jury retired to the jury
3 room to deliberate upon a verdict)

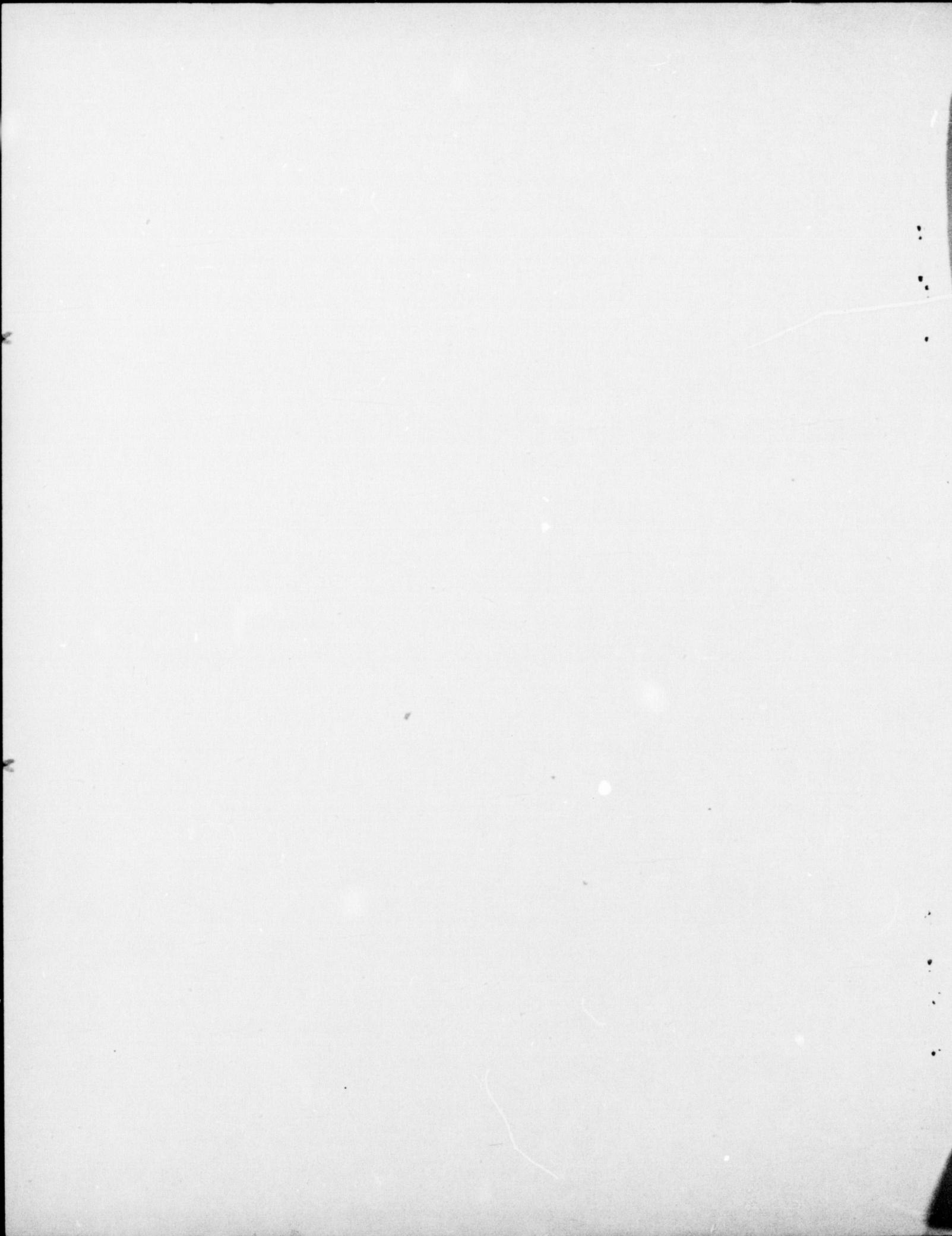


CERTIFICATE OF SERVICE

Feb 13 , 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York and to appellant.

Jonathan Albermann



Smallpox and Leprosy